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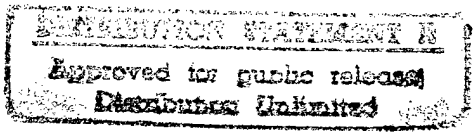

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A Chronicle of Abortion Legality, Medicaid Funding, and Parental Involvement Laws, 1967–1994

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Abstract

Empirical analyses of the effect of abortion regulation on demographic and health outcomes has been hampered by the difficulty of reconstructing what legal rules were in place in each state at a given point in time. Summarizing the results of a detailed review of the primary legal sources published elsewhere, this paper provides the required chronology. For three legal issues – the legality of abortion, Medicaid funding, and parental involvement – the paper reviews the broad legal issues, discusses the crucial Supreme Court cases, and includes figures documenting the dates on which the in-force legal rules in each state changed.

A Chronicle of Abortion Policy

Since the movement towards legalization of abortion began in the mid-1960s, the right to abortion has been a source of social and political discord. Rather than settling the issue, the Supreme Court's decision in Roe v. Wade[1] in early 1973 induced a tangled web of state legislation, administrative rulings, and litigation in state and federal courts.

For analysts trying to explore the effect of these legal rules on abortion and fertility rates and on maternal and infant health, simply establishing what was the law in a given state at a given point in time has been a major challenge. This challenge has been due to the combination of two factors. First, most of the policies are made at the state level; so, for each legal issue, there are 51 different legal environments to track. Second, the contentiousness of the issues has led to extensive and complicated litigation of almost every legislative and administrative act. Most statutes were tied up in court for years; many never became effective. For empirical purposes, it is crucial to establish not only the final status of a law (enforced or not), but its status throughout litigation. Because of the large volume of litigation and the frequent injunctions barring the enforcement of restrictive measures, the status of laws over time have been hard to assess and poorly documented.

For an audience of non-lawyers, this paper discusses three major legal issues: abortion legality, whether abortions were funded by each state's Medicaid program, and whether each state has required parental notification or parental consent before an abortion could be performed on a minor. For each of these issues, we discuss the bounds to state variation implied by federal actions (mostly Supreme Court decisions, but in the case of Medicaid funding, also federal legislation), the legal considerations, and the dates of shifts in legal regime in each state. Unless otherwise noted, the detailed sources for all of the findings presented here can be found in our companion law review article.[2]

Abortion Legality

Between the mid-19th century and the late-1960s, nearly all states prohibited abortions except when necessary to save the life of the woman. Several states banned abortion outright (New Hampshire prior to quickening, and Louisiana), while the statutory language in several other

jurisdictions (the District of Columbia and Alabama) permitted abortion in order to preserve the woman's life or health.

In 1962, the American Law Institute proposed a Model Penal Code (MPC) that included a section broadening the justifications for legal abortions to include cases in which:

(a) death or grave impairment of the physical or mental health of the woman would result if the pregnancy continued to term;

(b) the fetus would be born with a grave physical or mental defect; or,

(c) the pregnancy resulted from rape, incest, or statutory rape.[3]

In 1966, Mississippi amended its law to permit abortions in cases of rape. The following year, Colorado became the first state to adopt the MPC provisions. Over the next five years, a dozen states followed suit.

In 1970, Hawaii enacted legislation broader than the MPC provisions, legalizing abortions performed prior to viability. Similar laws were enacted in the following two years in Alaska, New York, and Washington (the last by referendum). The momentum generated by the legalization of abortion in these states led to several successful legal challenges of state abortion laws in federal courts. Table 1 summarizes this early legislative and judicial action.

On January 22, 1973, the U.S. Supreme Court decided two cases, Roe v. Wade[1] and Doe v. Bolton,[4] invalidating the abortion laws of Texas and Georgia respectively and making abortion prior to viability lawful for any reason. The Court ruled, however, that a state may proscribe abortion after viability, except when necessary to preserve the life or health of the woman. In Doe, the Court broadly defined the health justification (for the period after viability) permitting medical judgments to be made "in the light of all factors – physical, emotional, psychological, familial, and the woman's age – relevant to the well-being of the patient." (pg. 192)

Thus, Roe required a balancing of state's and individuals' rights with respect to abortion. The Court utilized a trimester framework to assist in this balancing. During the first trimester when the fetus is not viable women were allowed almost complete freedom to seek an abortion. During the second trimester, however, the state could take reasonable steps to protect women's health, but

could not proscribe abortion. During the third trimester, which at the time of Roe coincided with viability, the state's interest in protecting and promoting fetal life was maximal, and the state could proscribe abortion except when pregnancy threatened the woman's life or health. The trimester framework of Roe provided some guidance as to the priority of rights. However, the clarity of the trimester structure became blurred as medical science extended viability to earlier term fetuses.

In the wake of Roe, states (and cities and municipalities) enacted numerous laws restricting or regulating the performance of abortion in some fashion. Much of this legislation was challenged in the courts. In a series of cases in the post-Roe period, the Supreme Court ruled that most restrictions and regulations were inconsistent with the right to abortion enunciated in Roe.[i] For a decade and a half after Roe, limits on Medicaid funding and parental involvement requirements were the only significant restrictions on abortion permitted by the Supreme Court. This changed with the Supreme Court's Webster decision in 1989.

In Webster v. Reproductive Health Services,[6] the Court upheld additional regulations on the provision of abortions, including a prohibition of abortion in "public facilities" and a requirement of viability testing for pregnancies thought to be of at least 20 weeks gestation. Further extending the range of permissible regulation of abortion, the 1992 decision of Planned Parenthood of Southeastern Pennsylvania v. Casey[7] upheld waiting period and "informed consent" requirements where the required information is specifically intended to persuade women to choose childbirth over abortion. The Court, however, did reject a spousal notification provision.

In Casey, the Supreme Court affirmed the central holding of Roe v. Wade, but ruled that the women's right to privacy is not absolute. Instead the court ruled that it was appropriate to weigh the woman's right to privacy against the state's interest in protecting potential human life throughout the pregnancy term. In balancing these two interests, three justices authored a joint opinion in which they applied an "undue burden" standard, holding that laws and regulations would pass constitutional muster as long as they did not put an undue burden on women trying to exercise their right to terminate a pregnancy:

> Numerous forms of state regulation might have the incidental effect of increasing the cost or decreasing the availability of medical care, whether for abortion or any other medical procedure. The fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it. Only where state regulation imposes an undue burden on a woman's ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause. (pg. 2819)

The Casey decision manifests a substantive change in the standard for judging the constitutionality of abortion regulations. It recognizes a greater interest of the state in the potential life of a fetus throughout the term of pregnancy. The influence of this case is already being observed, and more states are enacting parental involvement laws as well as other types of regulations. Because of the unknown effects of different regulations on access and health, it is extremely important to document the timing and requirements of new laws and regulations of abortion.

The next two sections of this paper consider the two restrictions which the Supreme Court ruled were permissible under Roe. The first set of rulings concerned whether the states or the federal government are required to pay for abortions as part of the Medicaid program. The second set of rulings addressed the conditions under which states could require that parents be notified of or give consent for abortions performed on their minor daughters. We have not analyzed other regulations, such as viability testing, waiting periods, reporting, and detailed informed consent requirements, which have been upheld by the Supreme Court's decisions in Webster and Casey.

Medicaid Funding of Abortion

Established in the mid-1960s, Medicaid is a joint federal-state program which has been a major provider of health care to some otherwise uninsured individuals. Historically, eligibility was limited in relevant part to women and children living in households receiving Aid to Families with

Dependent Children (AFDC). However, since the mid-1980s, this eligibility has been expanded to include many other poor women and children who are not receiving AFDC.

Federal regulations define minimum requirements in order for a state Medicaid program to be eligible for federal matching funds.[ii] In particular, they require state Medicaid programs to cover a broad range of health services. Consistent with those regulations, with the trend towards legalization of abortion in the late 1960s, most state Medicaid programs provided reimbursement for those abortions which were legal under each state's law. Essentially, abortion was treated like other medically necessary care provided to eligible women. In addition, some states specified abortion as a family planning service, which permitted them to receive the higher (90 percent) federal matching funds for such services.[8]

Roe transformed abortion into a major political issue and, in doing so, raised two issues. First, could states exclude abortion from the list of medical services covered by Medicaid? Second, could the federal government choose to not match state Medicaid expenditures for abortion?

At the state level, immediately following Roe many states (by legislation or administrative ruling) refused to pay for "elective" abortions under Medicaid. These refusals were challenged in court as being unconstitutional under Roe. In 1977, the Supreme Court decided a pair of cases – Beal v. Doe[9] and Maher v. Roe[10] – holding respectively that neither the state nor the federal government is required to fund "elective" abortions under the terms of the federal statute or the U.S. Constitution.

At the federal level, beginning in 1976 the U.S. Congress passed the first of a long line of budgetary acts, known by their sponsor Senator Henry Hyde, restricting the conditions under which federal Medicaid funds could be used to pay for abortions performed to save the life of the woman. Suit was promptly brought to compel the government to continue funding for "medically necessary" abortion. Judge Dooling, the trial judge in McRae v. Mathews, placed a temporary stay on enforcement of the Hyde Amendment. The restrictive payment policy was put into effect on August 4, 1977. After a trial, the district court again enjoined enforcement of the Hyde

Amendment in early 1980, but this decision was reversed by the Supreme Court in June 1980 in Harris v. McRae.[11] After the Court refused to rehear the case, federal matching funds were cut off. Some version of the Hyde Amendment has been enacted every year since then, with the result that federal funds pay for few abortions. A chronicle of the Hyde Amendment, the details of which abortions it covered, and its enforcement is provided in Table 2.

Thus, in 1977 states were given the option of not paying for "elective" abortions under Medicaid; and in 1978 through early 1980, and after August, 1980, states were denied matching federal funds for "elective" and substantially all "medically necessary" abortions. Most states followed the federal lead and discontinued Medicaid funding for abortions. However, for at least part of the time since then, nine states have voluntarily continued funding abortion using state monies,[iii] and eight others have been compelled by state courts to fund abortions on state constitutional or statutory grounds.[iv]

Figure 1 summarizes the history of Medicaid payment for abortion in each state. The figure identifies the time period in which Medicaid funding was available in each state for "medically necessary" or "therapeutic" abortions. We have used a [?] to identify uncertain dates of implementation of different reimbursement policies.

Parental Involvement Laws

Parental notification and parental consent statutes are the other area of major legislative initiative to regulate and restrict access to abortions. Understanding the legal status of abortion for minors is difficult because of the conflicting rules regarding the fundamental legal issue of minors' legal capacity to provide consent to medical care. We begin with a brief review of that issue and the insights from relevant Supreme Court decisions related to the question of abortion. We then discuss the law in force in each state throughout the period and in particular the applicable legal rules in the absence of an enforced parental involvement statute.

Under the common law, minors do not have the capacity to consent to contract. This incapacity extends to medical care. Thus, the consent of minors to medical ministrations are generally legally ineffective, and, except in emergency situations, a physician who performs a

medical procedure on a minor without the permission of the parents could be liable for damages in civil lawsuit, and may also be open to criminal prosecution for assault.[12]

Some courts and many state legislatures have adopted various exceptions to the general rule that minors lack the legal capacity to consent to medical care. For example, in some instances, particular classes of minors are granted capacity. Under the emancipated minor doctrine, minors who have left home and are independent, who have married, who are serving active duty in the armed forces, and, in some states, have borne a child have the legal capacity to consent to medical care. Similarly, the more recently developed mature minor doctrine recognizes the legal consensual capacity of minors who are capable of understanding the medical situation facing them and of making reasoned decisions about medical care. Note, however, that few jurisdictions have expressly adopted the mature minor doctrine.[v]

In other instances, all minors (regardless of status or decision-making ability) have been granted capacity to consent to medical care in particular circumstances, including for pregnancy-related care (although 13 states expressly except abortion), contraceptive services, treatment of venereal disease, and drug abuse therapy. We have summarized the status of common and statutory laws of general minor capacity to consent in Figure 2 (excluding the emancipated and mature minor exceptions).

Further, in the 1960s and early 1970s, nearly all states lowered the age of majority from 21 to 18. Note that the age of majority has been 18 throughout the period in which abortion has been legal in most states. We have summarized in Table 3 the dates on which the age of majority was lowered for the handful of states that lowered the age of majority after abortion became legal in those states.

Most states which adopted the Model Penal Code (MPC) abortion provisions in the late 1960s and early 1970s expressly required the prior consent of parents before a minor could obtain a legal abortion. These new abortion laws thus retained criminal penalties for physicians performing abortions on minors without parental consent. After Roe, many states promptly enacted new abortion laws, often including requirements that doctors notify or receive the consent

of parents before performing an abortion on a minor. In most cases, these laws were in addition to the common law rules which allowed for civil suit for damages (and possible criminal prosecution) for failure to secure parental consent. They also seemed to conflict with the fundamental right to abortion enunciated by Roe v. Wade, but because Roe did not involve a minor, the question of whether minors could exercise such a right was unanswered.

Consequently, it fell to the judiciary and ultimately the Supreme Court to adjudicate whether such restrictions on a minor's ability to obtain an abortion were consistent with the rights identified in Roe. In a series of cases, the Supreme Court took an intermediate position. It neither ruled that any requirement for parental notification or consent was unconstitutional under the Roe standard, nor did it rule that states had the unrestricted ability to require parental notification or consent in every case before an abortion could be performed.

The first such decision concerned a Missouri parental consent law. In its 1976 decision in Planned Parenthood of Central Missouri v. Danforth,[13] the Supreme Court struck down Missouri's abortion-specific parental consent provision. The Court held the statute granted an unconstitutional veto to the minor's parents. The Court had before it only the abortion-specific consent statute, and not the parallel statute granting minors capacity to consent to pregnancy-related care other than abortion. In its decision, the Court stated: "We emphasize that our holding that [the parental consent provision] is invalid does not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy."(pg. 73) Thus, the Court held open the possibility that some forms of parental involvement might be acceptable.

In its 1979 decision in Baird v. Bellotti (Bellotti II),[14] the Court held that parental consent may be required only if there is an alternative (such as an expedited judicial review process) for young women who cannot or do not want to involve their parents. The Court offered that, in performing the judicial bypass role, a reviewing court must approve a minor's abortion if it finds that the minor is mature enough to make the decision on her own, or if not mature, that the abortion would be in her best interest.

A short time thereafter, in H.L. v. Matheson,[15] the Supreme Court let stand a statute requiring prior parental notification "if possible", despite the fact that it did not include a bypass provision. Because the minor in the particular case under review claimed merely that the Utah statute was unconstitutional, and did not claim that she was mature nor that the abortion was in her best interest, the Court did not address these issues. If those issues had been raised, the statute might have been invalidated.

Since Bellotti, several Supreme Court rulings have further clarified the parameters of acceptable judicial bypass. In City of Akron v. Akron Center for Reproductive Health, Inc.,[16] the Court struck down a bypass procedure that provided notice to parents of the filing of a petition seeking court approval of an abortion. In a case decided the same day, Planned Parenthood v. Ashcroft,[17] the Court approved Missouri's revised parental consent law on the grounds that the new provision incorporating expedited judicial review was constitutionally adequate. In Hodgson v. Minnesota,[18] the Court upheld a two-parent notification statute requiring notice 48 hours prior to performing an abortion on a minor. A majority of the justices ruled that the two-parent notice requirement placed an unwarranted burden on minors (for example, finding the second parent may be difficult or notice may put the young woman at risk of harm), but a different majority ruled the notice requirement was saved by an adequate judicial bypass provision. In Ohio v. Akron Center for Reproductive Health,[19] the Court upheld a one-parent notification law that required 24 hours notice prior to performance of the abortion and provided judicial bypass of the notice requirement. Finally, the Casey[7] opinion upheld Pennsylvania's current one-parent consent statute, which includes a judicial bypass option.

This sequence of Supreme Court decisions can be interpreted as implying separate rules for mature and immature minors. For mature minors, the Court has ruled that Roe and Casey protects their right to an abortion without parental involvement. Thus, at least with respect to abortion, the Supreme Court appears to have implicitly adopted the mature minor doctrine. Therefore, parental involvement statutes that do not provide a mechanism through which minors can prove their maturity before an impartial judge unconstitutionally restrict the right of mature minors to an

abortion and are unconstitutional. Note, however, that the requirement to prove maturity before a judge is not itself viewed as an unconstitutional restriction.[vi]

For immature minors, Roe does not guarantee them the right to choose to have an abortion without the involvement of their parents. States may enact legislation imposing additional civil or criminal penalties on those performing such abortions and specifying the nature of notification or consent that doctors must secure before they perform an abortion on an immature minor. Furthermore, consistent with the standard legal practice with respect to the provision of other medical care to minors, states must allow for the possibility of judicial bypass of parental involvement for cases where the abortion would be in the "best interests" of the young woman.[vii]

After the Supreme Court invalidated its parental consent law, Massachusetts became the first state to enact a law containing sufficient judicial review. That law went into effect in mid-April 1981. The next several states to pass such laws found their statutes caught up in state-specific litigation, leaving many of the laws unenforced through much of the 1980s.

As of January 1995, twenty-one states had parental involvement laws in force. Figure 3 summarizes the status of these statutes throughout the period of this review. Parental consent laws are denoted with a black line, parental notification laws with a gray line. As discussed, there are many extant laws which are not enforced. The figure denotes laws that are on the books but unenforceable (and have not been repealed) with a thin line, and those which are enforced with a thick line. As in the previous figures, we show uncertain dates of implementation with a [?].

As shown in this Figure, there are several states in which there are no explicit parental involvement laws which leaves open the issue of what the law is applicable to those performing abortions on minors. It appears that in the absence of a specific parental notification or consent statute, the Supreme Court's rulings in Danforth and Bellotti imply that mature minors have a right to consent to abortions, but that immature minors do not. Thus, doctors performing abortions on minors remain open to suit on the factual question of maturity. Doctors performing abortions without parental consent on minors who are later found to be immature could be liable for civil damages (and perhaps even criminal prosecution).[ix] In fact, we have found few such cases. In

practice, it appears that either parents do not learn of their daughter's abortion, or if they do, choose not to litigate after the abortion is performed. Nonetheless, it appears that there is potential for (at the very least nuisance) suits on the factual question of maturity.

This line of reasoning suggests that one consequence of such parental consent statutes could be an increase in the abortion rate of minors. By having maturity established, ex ante, in a judicial proceeding, physicians are (and should feel) better protected against subsequent suit, and therefore will be more willing to provide abortions. Because of the procedural hurdles, minors have a greater incentive to travel to other states, which would lower the number of abortions to minors.[21] The net effect appears to be in this direction.[22]

Conclusion

The primary purpose of this paper has been to provide a broad chronology of the legislative and legal actions concerning three primary issues related to abortion on which there has been inter-state variation: The legality of abortion, whether abortions were funded by the state's Medicaid program, and whether the state required parental notification or consent before an abortion could be performed on a minor. For each issue we have reviewed the broad legal considerations, discussed the relevant Supreme Court decisions, and provided a chronology of the beginning and ending of each legal regime, in each state.

We expect that the precise dates of enactment and enforcement of these laws and policies will be of use to social scientists who wish to explore the demographic and health effects of these legal regulations. With the 1990 Casey decision, such social science research has the potential for directly affecting the legal outcomes. Empirical studies of the effects of abortion regulation on abortion rates or births would presumably be one piece of evidence to be used in proving that a questioned regulation violates the Casey "undue burden" standard. The chronology provided in this study should help in the preparation of such empirical studies.

The Casey decision, granting greater latitude in regulating the provision of abortion, coupled with a palpable shift in the political environment in the 1994 national elections, are nurturing an increase in legislative activity further restricting access to abortion services. Litigation

challenging many of these laws is only now working its way through the courts. An equivalent review of such post-Casey regulation is thus premature, and we leave it to a future paper.

TABLE 1

LEGALIZATION OF ABORTION BEFORE ROE V. WADE.

EFFECTIVE DATE	STATE	ACTION
June 8, 1966	Mississippi	Legalized abortion in cases of rape.
April 25, 1967	Colorado	Adopted the MPC provisions.
May 9, 1967	North Carolina	Adopted the MPC provisions.
November 8, 1967	California	Adopted the MPC provisions.
July 1, 1968	Maryland	Adopted the MPC provisions.
February 17, 1969	Arkansas	Adopted the MPC provisions.
June 17, 1969	Delaware	Adopted the MPC provisions.
June 20, 1969	New Mexico	Adopted the MPC provisions.
July 1, 1969	Georgia	Adopted the MPC provisions.
August 22, 1969	Oregon	Adopted the MPC provisions.
January 29, 1970	South Carolina	Adopted the MPC provisions.
July 1, 1970	Kansas	Adopted the MPC provisions.
July 1, 1970	Virginia	Adopted the MPC provisions.
July 1, 1970	New York	Legalized all "medically necessary" abortion.
July 29, 1970	Alaska	Legalized abortion prior to viability.
March 11, 1970	Hawaii	Legalized abortion prior to viability.
December 3, 1970	Washington	Referendum legalized abortion prior to 4 months gestation.
January 14, 1972	Vermont	State court invalidated abortion law, legalizing abortion prior to quickening.
April 12, 1972	Florida	Adopted the MPC provisions after state court invalidated state abortion law.
November 22, 1972	California	State court invalidated MPC-based abortion law, legalizing abortion before the 20th gestational week.
January 22, 1973	All states	Supreme Court decisions in Roe v. Wade and Doe v. Bolton, legalizing abortion prior to viability.

TABLE 2

HISTORY OF FEDERAL IMPLEMENTATION OF THE HYDE AMENDMENT.

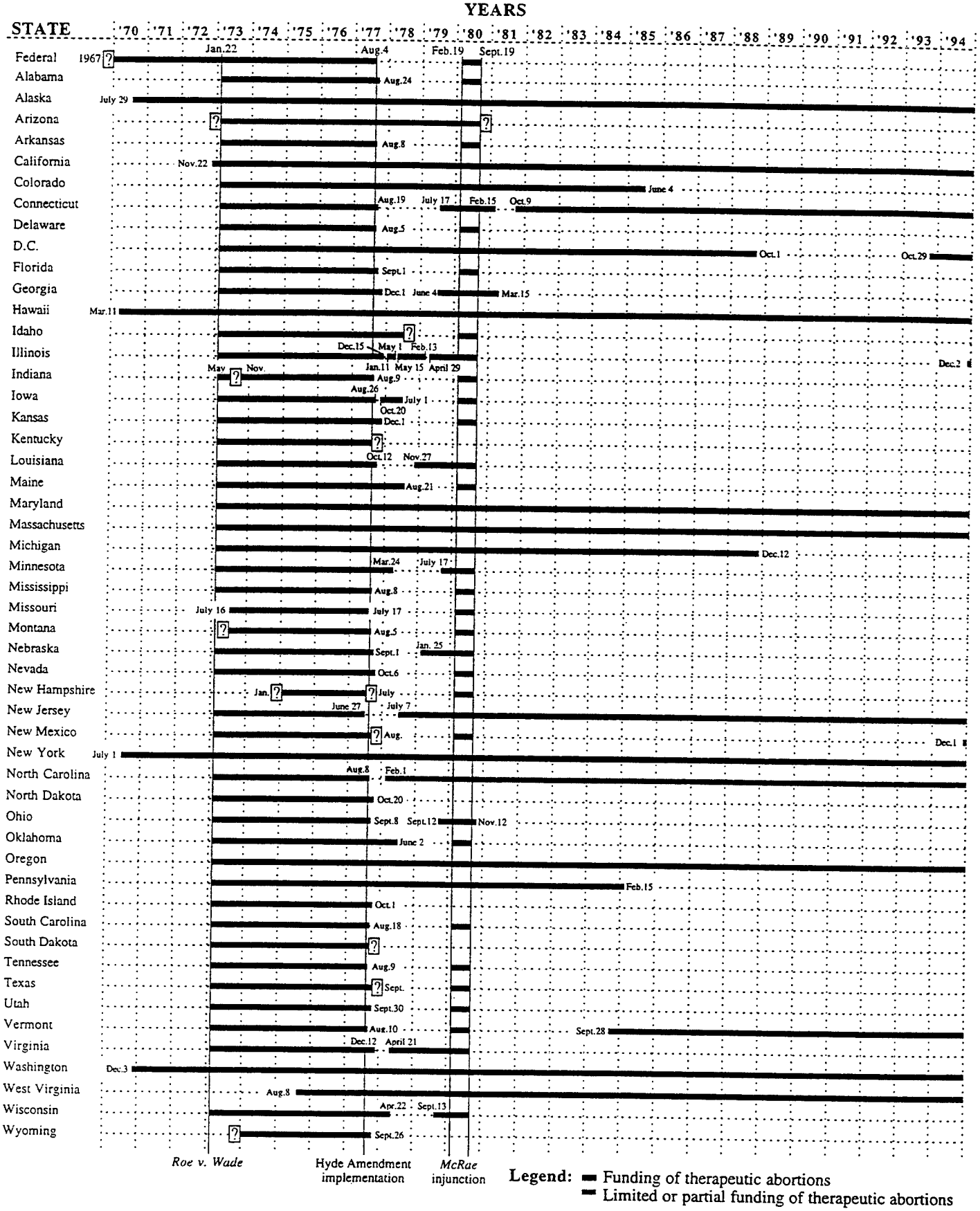
DATE	ACTION
September 30, 1976	Hyde Amendment enacted, which would restrict federal matching funds to pay only for abortions performed to save the life of the woman.
October 1, 1976	Temporary Restraining Order granted by federal district court in McRae v. Mathews, blocking implementation of the restrictive payment policy.
October 22, 1976	Trial court issues preliminary injunction after hearing; funding of all "medically necessary" abortions continued.
August 4, 1977	After remand by the Supreme Court for reconsideration in light of Beal and Maher, the trial court dissolved the restraining order and the restrictive reimbursement policy went into effect.
February 14, 1978	Hyde standard amended to provide reimbursement for abortions when pregnancy threatened severe long-term physical health damage to the woman and when pregnancy resulted from reported rape or incest.
February 19, 1980	After a lengthy trial, the district court again enjoined enforcement of the law, and reimbursement was thereafter provided for "therapeutic" abortions.
June 30, 1980	The Supreme Court reversed the trial court in Harris v. McRae.
September 19, 1980	The Supreme Court denied rehearing in McRae, and the restrictive payment policy went into effect, limiting payment to cases where necessary to save the life of the woman, ectopic pregnancy, and rape or incest.
June 5, 1981	Hyde standard amended to provide reimbursement for abortions performed to save the life of the woman.
October 1, 1993	Hyde standard amended to provide reimbursement for abortions performed to save the life of the woman and in cases of rape or incest.

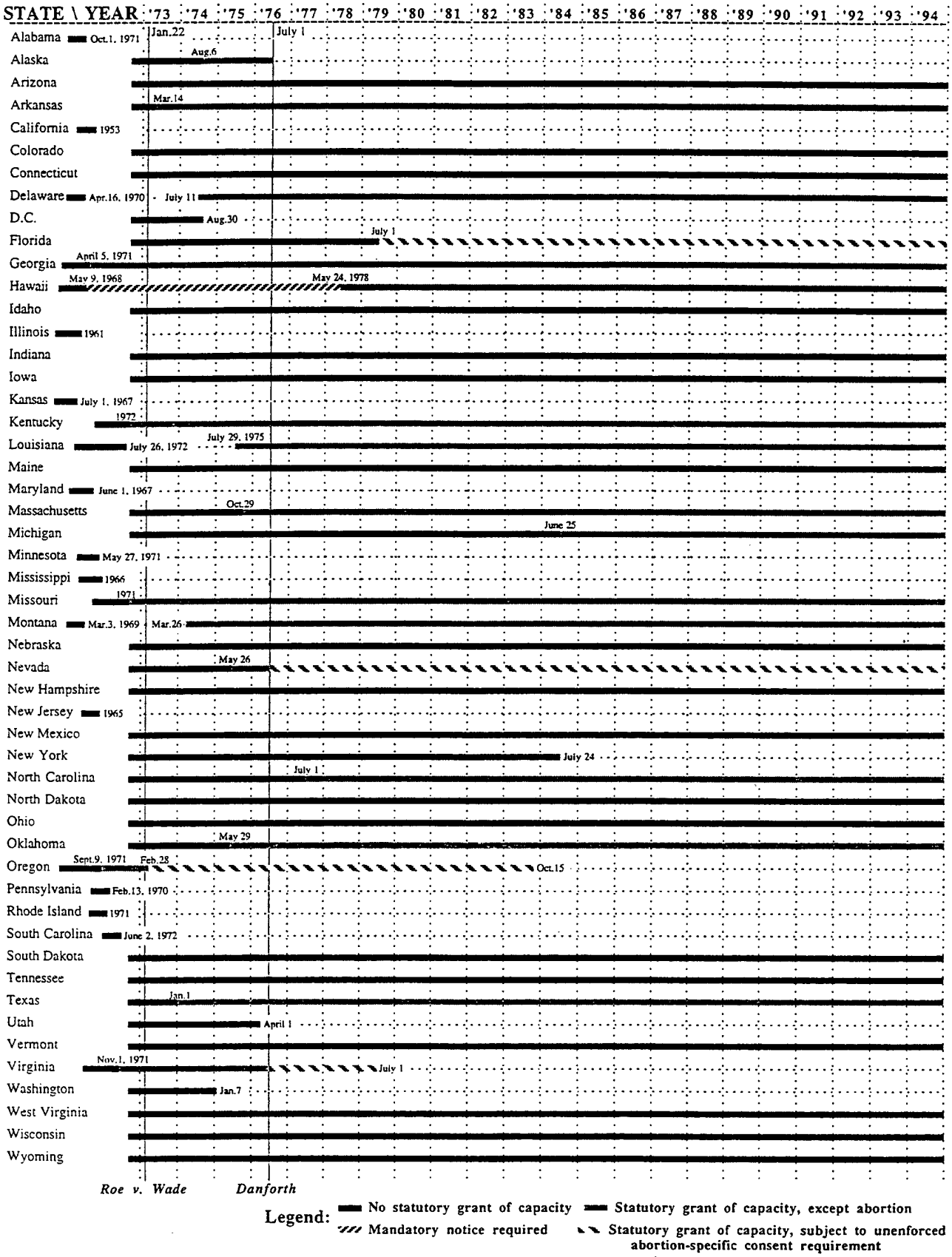
TABLE 3

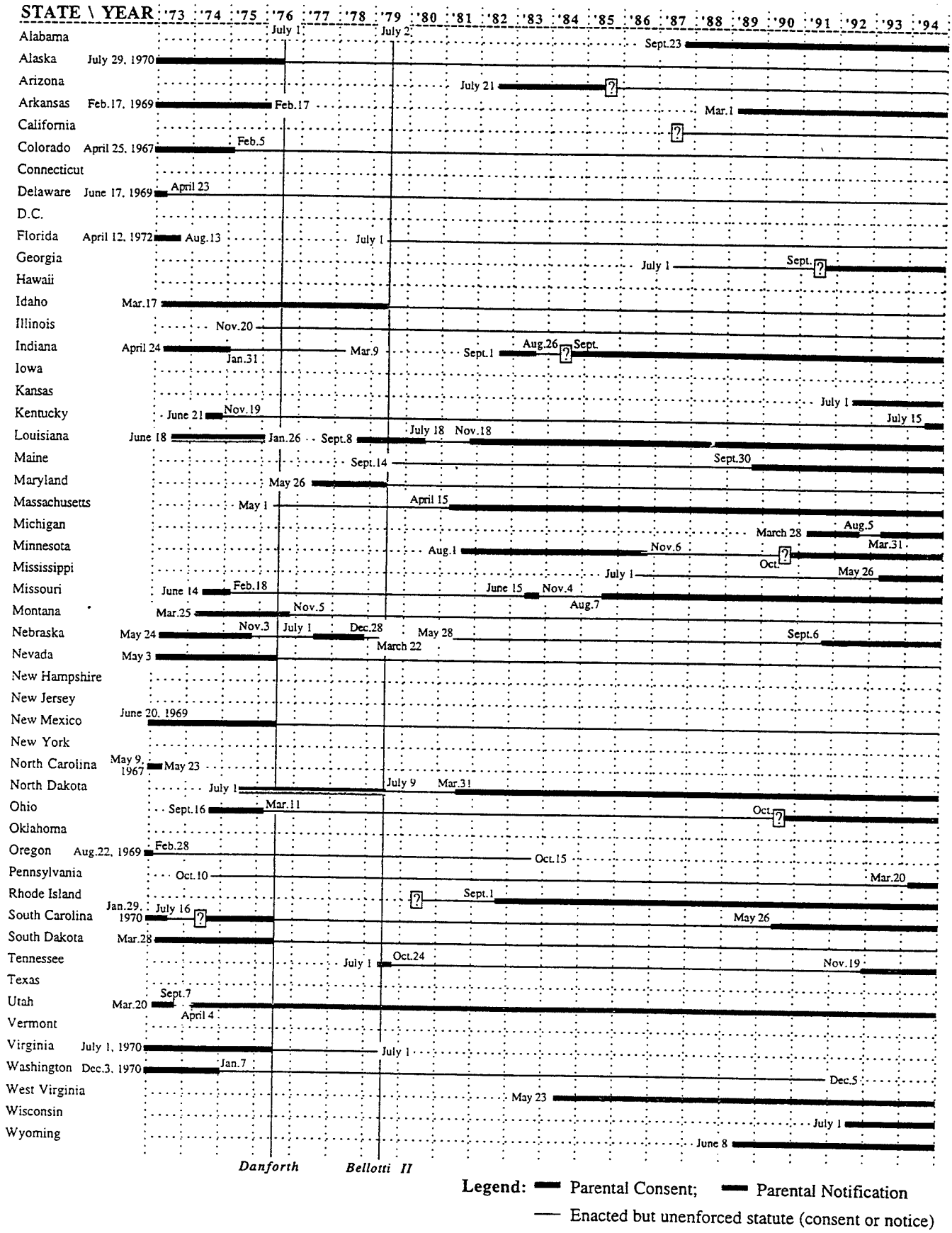
DATES ON WHICH THE AGE OF MAJORITY WAS LOWERED BY A STATE AFTER LEGALIZATION OF ABORTION IN THAT STATE.*

STATE	AGE OF MAJORITY REDUCED FROM–TO:	EFFECTIVE DATE
Alabama	21–19	July 22, 1975
Alaska	19–18	1977
District of Columbia	21–18	July 22, 1976
Georgia	21–18	July 1, 1972
Hawaii	20–18	March 28, 1972
Indiana	21–18	April 16, 1973
Iowa	19–18	1973
Kansas	21–18	July 1, 1972
Kentucky	21–18	July 26, 1972
Missouri	21–18	July 27, 1977
Montana	21–18	March 6, 1973
New Hampshire	21–18	June 3, 1973
New York	21–18	June 2, 1972
Ohio	21–18	September 16, 1974
Oregon	21–18	July 20, 1973
Texas	21–18	August 27, 1973
Virginia	21–18	July 1, 1972
Wyoming	19–18	July 1, 1993

* Note that, in all other states, the age of majority was 18 at the time abortion was legalized.


YEARS
STATE
'70 '71 '72 '73 '74 '75 '76 '77 '78 '79 '80 '81 '82 '83 '84 '85 '86 '87 '88 '89 '90 '91 '92 '93 '94
Federal 1967 ? Jan.22 Aug.4 Feb.19 Sept.19
Alabama Aug.24
Alaska July 29
Arizona ? ?
Arkansas Aug.8
California Nov.22
Colorado June 4
Connecticut Aug.19 July 17 Feb.15 Oct.9
Delaware Aug.5
D.C. Oct.1 Oct.29
Florida Sept.1
Georgia Dec.1 June 4 Mar.15
Hawaii Mar.11
Idaho ?
Illinois Dec.15 May 1 Feb.13 Dec.2
Indiana May Nov. ? Jan.11 May 15 April 29
Iowa Aug.9 Aug.26 July 1
Kansas Oct.20 Dec.1
Kentucky ?
Louisiana Oct.12 Nov.27
Maine Aug.21
Maryland
Massachusetts
Michigan Dec.12
Minnesota Mar.24 July 17
Mississippi Aug.8
Missouri July 16 July 17
Montana ? Aug.5
Nebraska Sept.1 Jan. 25
Nevada Oct.6
New Hampshire Jan. ? ? July
New Jersey June 27 July 7
New Mexico ? Aug.
New York July 1 Dec.1
North Carolina Aug.8 Feb.1
North Dakota Oct.20
Ohio Sept.8 Sept.12 Nov.12
Oklahoma June 2
Oregon
Pennsylvania Feb.15
Rhode Island Oct.1
South Carolina Aug.18
South Dakota ?
Tennessee Aug.9
Texas ? Sept.
Utah Sept.30
Vermont Aug.10 Sept.28
Virginia Dec.12 April 21
Washington Dec.3
West Virginia Aug.8
Wisconsin Apr.22 Sept.13
Wyoming ? Sept.26
Roe v. Wade
Hyde Amendment implementation
McRae injunction
Legend: Funding of therapeutic abortions
Limited or partial funding of therapeutic abortions


STATE \ YEAR
'73 '74 '75 '76 '77 '78 '79 '80 '81 '82 '83 '84 '85 '86 '87 '88 '89 '90 '91 '92 '93 '94
Alabama Oct.1, 1971
Alaska
Arizona
Arkansas
California 1953
Colorado
Connecticut
Delaware Apr.16, 1970
D.C.
Florida
Georgia
Hawaii
Idaho
Illinois 1961
Indiana
Iowa
Kansas July 1, 1967
Kentucky
Louisiana July 26, 1972
Maine
Maryland June 1, 1967
Massachusetts
Michigan
Minnesota May 27, 1971
Mississippi 1966
Missouri
Montana Mar.3, 1969
Nebraska
Nevada
New Hampshire
New Jersey 1965
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon Sept.9, 1971
Pennsylvania Feb.13, 1970
Rhode Island 1971
South Carolina June 2, 1972
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia Nov.1, 1971
Washington
West Virginia
Wisconsin
Wyoming
Jan.22
July 1
Aug.6
Mar.14
July 11
Aug.30
July 1
April 5, 1971
May 9, 1968
May 24, 1978
1972
July 29, 1975
Oct.29
June 25
1971
Mar.26
May 26
July 24
July 1
May 29
Feb.28
Oct.15
Jan.1
April 1
July 1
Jan.7
Roe v. Wade
Danforth
Legend:
No statutory grant of capacity
Statutory grant of capacity, except abortion
Mandatory notice required
Statutory grant of capacity, subject to unenforced abortion-specific consent requirement


STATE \ YEAR
'73 '74 '75 '76 '77 '78 '79 '80 '81 '82 '83 '84 '85 '86 '87 '88 '89 '90 '91 '92 '93 '94
Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
D.C.
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming
July 1
July 2
July 29, 1970
Sept.23
July 21
Feb.17, 1969
Feb.17
Mar.1
April 25, 1967
Feb.5
April 23
June 17, 1969
April 12, 1972
Aug.13
July 1
July 1
Sept.
Mar.17
Nov.20
April 24
Jan.31
Mar.9
Sept.1
Aug.26
Sept.
July 1
June 21
Nov.19
July 15
June 18
Jan.26
Sept.8
July 18
Nov.18
Sept.14
Sept.30
May 26
May 1
April 15
March 28
Aug.5
Aug.1
Nov.6
Mar.31
Oct.
July 1
May 26
June 14
Feb.18
June 15
Nov.4
Mar.25
Nov.5
Aug.7
May 24
Nov.3
July 1
Dec.28
May 28
Sept.6
May 3
March 22
June 20, 1969
May 9, 1967
May 23
July 1
July 9
Mar.31
Sept.16
Mar.11
Oct.
Aug.22, 1969
Feb.28
Oct.15
Oct.10
Mar.20
Sept.1
Jan.29, 1970
July 16
May 26
Mar.28
July 1
Oct.24
Nov.19
Sept.7
Mar.20
April 4
July 1, 1970
July 1
Dec.3, 1970
Jan.7
Dec.5
May 23
July 1
June 8
Danforth
Bellotti II
Legend: Parental Consent; Parental Notification
Enacted but unenforced statute (consent or notice)

Footnotes

i. For example, Colautti v. Franklin invalidated Pennsylvania regulations requiring physicians to preserve the health of viable or potentially viable fetuses; Thornburgh v. American College of Obstetricians and Gynecologists invalidated later Pennsylvania "informed consent," reporting, and fetus protection requirements.[5]

ii. The formula for federal matching assures that the federal government pays a larger share of costs for poorer states than for richer states. In 1979, concurrent with early Hyde Amendments, the maximum match rate was almost 78 percent (for Mississippi) and the minimum was 50 percent.

iii. Alaska, the District of Columbia, Hawaii, Maryland, New Mexico, New York, North Carolina, Washington, and West Virginia.

iv. California, Connecticut, Illinois, Massachusetts, New Jersey, Oregon, Pennsylvania, and Vermont.

v. These states include Mississippi and New Hampshire by legislation, Illinois, Kansas, Michigan, and Pennsylvania by judicial decision, and the Ohio courts have expressly rejected the mature minor doctrine.

vi. Most states require such proof "by a preponderance of the evidence" (i.e., more likely than not). In Ohio and Wyoming the courts may only grant a minor's petition if the judge finds by "clear and convincing evidence" that the minor is mature or, if not, that abortion would be in her best interest. This standard was upheld by the Supreme Court in Ohio v. Akron Center for Reproductive Health,[19] where the Court stated that the heightened burden of proof would not create an impermissible burden because the minor would have legal representation and no one would present opposing evidence.

vii. This legal discussion, of course, leaves open the question of how, in practice, maturity is established. If all minors are determined to be mature, the law would have little effect. If all minors are judged to be immature, the law could have considerable effect. Note that even if all minors are judged mature, the law still imposes the requirement to appear in court. Doing so

can involve considerable travel, missing school, and subterfuge in order to avoid having the judicial bypass itself result in de facto parental notification. On the issue of how the laws are applied in practice, see P. Donovan, "Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions," *Family Planning Perspectives,* 15(6):259-267, 1983; F. Clary, "Minor Women Obtaining Abortions: A Study of Parental Notification in a Metropolitan Area, *American Journal of Public Health,* 72:283, 1982.[20]

ix. This line of reasoning suggests that, in states with notice statutes, once a parent is appropriately notified that an abortion will be performed, the right to civil suit or criminal enforcement is waived. This appears to be true even for immature minors. Thus, absent a specific consent statute, these laws appear to have the effect of recognizing the capacity of all minors to consent to abortion, albeit with actual or constructive notice of parents.

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13. Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976).

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15. H.L. v. Matheson, 450 U.S. 398 (1981).

16. City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (1983).

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